

November 27, 2002

Federal Communications Commission  
Commission's Secretary  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: Notice of Proposed Rulemaking in CG Docket 02-278  
and  
Memorandum Opinion and Order in CC Docket 92-90

Dear Mr. Secretary:

On behalf of our 24,000 members across the United States, I am pleased to present the comments of the Association of Fundraising Professionals (AFP) regarding the Federal Communications Commission's (FCC) notice of proposed rulemaking and memorandum opinion and order regarding rules and regulations implementing the Telephone Consumer Protection Act (TCPA).

Our comments focus primarily on the application of the TCPA and a proposed national "do not call" list to charitable organizations and those for-profit consulting firms that provide services to charitable organizations. Charitable organizations do not exist for commercial profit or private gain, but to serve people and communities. AFP is concerned about the potential unintended impact the TCPA regulations, as well as a national "do not call" list, would have on charities and their ability to provide critically needed services.

#### **Organizational Background**

For more than forty years, the Association of Fundraising Professionals (AFP), has provided guidance and standards to those engaged in the philanthropic process. AFP's considerable expertise in the legislative field is based upon the combined experience of its 26,000 members across North America. We have 169 chapters located in almost every state and metropolitan area, as well as in Canada and Mexico.

AFP members are required annually to sign our Code of Ethical Principles and Standards of Professional Practice, which were first developed in 1964. AFP instituted a credentialing process in 1981 - the CFRE, Certified Fund Raising Executive designation to aid in identifying for the giving public fund raisers who possess the demonstrated knowledge and skills necessary to perform their duties in an effective, conscientious, ethical, and professional manner.

We also have a strong ethics enforcement policy that can result in the revocation of credentials and expulsion of members who engage in prohibited behavior.

### **Donor Privacy**

This background is cited to emphasize the importance that AFP and its members place on ethical fundraising, especially in the context of donor privacy. AFP has championed donor rights for more than 40 years. AFP was the driving force behind the creation of the Donor Bill of Rights and provides information to potential donors about how to select and evaluate charities, and give wisely to them.

AFP is committed to protecting the privacy and confidentiality of all donor transactions. Ethical fundraising is by its very nature donor-centered - the wishes and interests of the donor must come first. Consequently, donor privacy is an issue of extreme priority for AFP and the entire fundraising profession.

AFP's Code of Ethics reflects this considerable regard for privacy. Several specific standards from our Code manifest this concern:

Standard 12: Members shall not disclose privileged or confidential information to unauthorized parties.

Standard 13: Members shall adhere to the principle that all donor and prospect information created by, or on behalf of, an organization is the property of that organization and shall not be transferred or utilized except on behalf of that organization.

Standard 14: Members shall give donors the opportunity to have their names removed from lists that are sold to, rented to, or exchanged with other organizations.

These standards concerning privacy are already in place in the charitable fundraising profession and go a long way to protect the same interests sought to be defended by the proposed rules. Again, AFP has a strong enforcement policy for fundraisers who fail to satisfy these standards.

At a time when other sectors of the economy are being given new freedoms to self-regulate, it seems contradictory to impede the strong existing tradition of self-regulation in the nonprofit sector. Rather than promulgating new bureaucratic limitations on the ability of a charity to contact the philanthropic donor, existing standards should be the starting point for the development of refined donor privacy safeguards.

## **Items for Discussion**

### **Paragraph 33: Tax-Exempt Nonprofit Organizations**

The FCC has exempted from its TCPA rules calls made on behalf of tax-exempt nonprofit organizations and those for-profit telemarketers working on their behalf. AFP believes that this approach continues to be the correct one to take as the FCC contemplates changes to the current rules.

Nonprofit organizations are not run for private profit or gain, and solicitation calls made by them or on their behalf are not commercial in nature. It makes no difference whether or not it is the charity or the for-profit telemarketing calling - the key is the charitable message, not the messenger. In addition, the number of telephone solicitations is dwarfed by the number of commercial calls, and charities must take extra efforts to be sure it interacts with the public in an appropriate and ethical fashion. After all, the public doesn't receive anything in return for its contributions - the only thing a charity has to offer the public is its reputation.

Because of these factors, the FCC should continue to exempt charities and any for-profit telemarketers they use from TCPA requirements.

The Commission cites the example of a nonprofit organization calling consumers to sell a company's magazines, with the nonprofit receiving a portion of the proceeds (i.e. the practice of "cause-related marketing"). This type of nonprofit/for-profit initiative does not represent a "pure" charitable appeal. The primary purpose of such a transaction is receipt of a product or service by the consumer, not the charitable transfer of funds.

### **Paragraph 56: Application of a National Do-Not-Call List to For-Profit Telemarketers Working on Behalf of Charities**

AFP is extremely concerned about the development of a national do-not-call list and its application to for-profit telemarketers working on behalf of a charitable organization, as proposed in the draft regulations developed by the Federal Trade Commission (FTC). We believe that the trouble, confusion and burden that it will place on **all** charitable organizations does not justify its imposition on charity telemarketers, and urge the FCC to exempt those telemarketers working on behalf of charities should a national do-not-call list move forward.

There are nearly 800,000 charitable organizations in the United States. Many use staff and their own volunteers to make calls, and these organizations would not be affected by

the list. But many charities do not have sufficient staff or volunteers to make donor solicitation calls, so they often hire for-profit telemarketers. And because they do, the FTC proposal would require their telemarketer to obtain the do-not-call list and these charities will not have access to the same number of prospective donors.

The FTC proposal creates an uneven playing field for those charities that do not have the staff of volunteers available to make solicitation calls. The mission and message of a charity does not change simply because it employs a for-profit telemarketing firm. Its status as a tax-exempt nonprofit does not change, and contributions to it are still tax-deductible. Yet, under the FTC proposal, it will not have access to the same donors. The government should not favor charities that employ one gift solicitation method over another.

The situation becomes even more tenuous when one considers that many large charitable organizations have several campaigns going on throughout the year. One campaign might use volunteers and staff, while the other is being coordinated by a for-profit telemarketing firm (or in other cases there may be a single large campaign using both volunteers and a for-profit telemarketing firm). Assuming that an individual had signed up for the do-not-call list as created by the FTC proposal, the charity would be able to contact that person regarding the campaign that was using volunteers. But that very same charity would be unable to contact that same individual for the campaign that was employing a for-profit telemarketer.

In addition, scrubbing the names of individuals who have signed up for a national do-not-call list from a particular calling list is an expensive proposition. For-profit marketers can be expected to pass on these costs to the charity, which will mean the charity has fewer donated funds to spend on its programs. The government should actively avoid unnecessary requirements that reduce the stream of charitable dollars to charity stakeholders.

It's clear that applying the requirements of a do-not-call-list to for-profit telemarketers working on behalf of charities is burdensome and confusing to not only charities themselves (irrespective of whether they use for-profit telemarketers or not), but the public as well. AFP strongly recommends that such telemarketers be exempt from any national do-not-call list being developed by the federal government.

#### **Paragraph 60: State Do-Not-Call Lists**

AFP is extremely concerned about the relationship between a national do-not-call list and the various state lists that

have either been already created or are being discussed by legislatures. While AFP believes that charities and telemarketers who work on their behalf should be exempt, let us assume for a moment they are not.

The costs of having to comply with the requirements of both the national and all of the state lists would be extremely burdensome, especially to smaller charities. Telemarketers working on behalf of charities would have to acquire both a state and national list (and potentially all state lists if a national campaign is being run, a common practice), thereby further increasing the cost to both charities and donors. The state lists are often inconsistent in terms of their own definitions, which will cause additional confusion about which organizations and activities are covered under various state laws.

Any national do-not-call list must pre-empt state lists, especially if charities and those telemarketers working on their behalf must use them. AFP does not see how having both a federal list and various state lists provides any justifiable additional safeguards in view of the costs attributable to maintaining such lists.

## **Conclusion**

AFP appreciates this opportunity to comment on potential changes to FCC regulations regarding the TCPA and the creation of a national "do not call" list.

AFP believes that the FCC's current position of exempting charities and their agents working on their behalf is an appropriate one that should be continued as the FCC considers regulatory changes. The application of a national "do not call" list to charities and telemarketers that provide services to charities will create a myriad of problems that outweigh any suggested benefit to the public, especially in light of ethical standards that are already in place.

AFP offers its resources and perspective if the FCC has additional questions or queries regarding these comments. We look forward to working with the FCC to refine these proposals to ensure charities have the ability to raise critically needed funds while safeguarding the privacy rights of the public. Please do not hesitate to contact me at (703) 684-0410.

Sincerely,

Paulette V. Maehara, CFRE, CAE

President & CEO  
Association of Fundraising Professionals